

APPEAL NO. 042007
FILED OCTOBER 7, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 20, 2004. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the first quarter.

The appellant (carrier) appeals, contending that there was no credible evidence that the claimant worked during the relevant qualifying period and that the claimant's testimony and documentary evidence was inconsistent. The claimant responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The carrier appeals both the direct result requirements of Rule 130.102(b)(2) and the good faith effort to obtain employment of Rule 130.102(b)(2).

The claimant's Application for [SIBs] (TWCC-52) indicates that he looked for work and documented his job search efforts every week of the qualifying period (stipulated to be from January 14 through April 13, 2004) except for one week in February 2004 when the claimant was employed in a nursing home position. The evidence establishes that the claimant returned to work in the nursing home in a position relatively equal to his ability to work until his hours were increased beyond his restrictions.

Rule 130.102(d)(1) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has returned to work in a position which is relatively equal to the injured employee's ability to work. Although the carrier disputes that the claimant worked during the qualifying period, the hearing officer could believe the claimant's testimony. The hearing officer may believe all, part, or none of the testimony of any witness, including the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). A claimant need only show good faith by complying with any of the subsections of Rule 130.102(d). Texas Workers' Compensation Commission Appeal No. 020713, decided April 17, 2002. The Appeals Panel has held that if the claimant complies with Rule 130.102(d)(1) during any portion of the qualifying period, that will satisfy the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2). Texas Workers' Compensation Commission Appeal No. 030759, decided May 15, 2003. Although there was some discrepancies in the hearing officer's comments of the dates that the claimant worked in the nursing home, there is sufficient

evidence that the claimant worked at least two weeks during the qualifying period based on the claimant's testimony.

The carrier asserts that the claimant's underemployment during the qualifying period was not a direct result of his impairment. We have noted that a finding that the claimant's unemployment or underemployment is a direct result of the impairment is sufficiently supported by evidence if the injured employee sustained a serious injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 960028 decided February 15, 1996. In this instance, there is evidence from which the hearing officer could determine that the claimant's injury resulted in permanent impairment and that, as a result thereof, the claimant could no longer reasonably work in his preinjury job. The carrier challenges the claimant's testimony as being inconsistent, but it is the hearing officer that is the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a).

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO MALO
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Edward Vilano
Appeals Judge